

SECOND REGULAR SESSION

SENATE BILL NO. 986

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARNITZ.

Read 1st time February 22, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5182S.011

AN ACT

To repeal sections 334.506 and 334.613, RSMo, and to enact in lieu thereof two new sections relating to advanced practice registered nurses.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 334.506 and 334.613, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 334.506 and 334.613, to
3 read as follows:

334.506. 1. As used in this section, "approved health care provider"
2 means a person holding a current and active license as a physician and surgeon
3 under this chapter, a chiropractor under chapter 331, RSMo, a dentist under
4 chapter 332, RSMo, a podiatrist under chapter 330, RSMo, a physician assistant
5 under this chapter, **an advanced practice registered nurse under chapter**
6 **335**, or any licensed and registered physician, chiropractor, dentist, or podiatrist
7 practicing in another jurisdiction whose license is in good standing.

8 2. A physical therapist shall not initiate treatment for a new injury or
9 illness without a prescription from an approved health care provider.

10 3. A physical therapist may provide educational resources and training,
11 develop fitness or wellness programs for asymptomatic persons, or provide
12 screening or consultative services within the scope of physical therapy practice
13 without the prescription and direction of an approved health care provider.

14 4. A physical therapist may examine and treat without the prescription
15 and direction of an approved health care provider any person with a recurring
16 self-limited injury within one year of diagnosis by an approved health care
17 provider or a chronic illness that has been previously diagnosed by an approved
18 health care provider. The physical therapist shall:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (1) Contact the patient's current approved health care provider within
20 seven days of initiating physical therapy services under this subsection;

21 (2) Not change an existing physical therapy referral available to the
22 physical therapist without approval of the patient's current approved health care
23 provider;

24 (3) Refer to an approved health care provider any patient whose medical
25 condition at the time of examination or treatment is determined to be beyond the
26 scope of practice of physical therapy;

27 (4) Refer to an approved health care provider any patient whose condition
28 for which physical therapy services are rendered under this subsection has not
29 been documented to be progressing toward documented treatment goals after six
30 visits or fourteen days, whichever first occurs;

31 (5) Notify the patient's current approved health care provider prior to the
32 continuation of treatment if treatment rendered under this subsection is to
33 continue beyond thirty days. The physical therapist shall provide such
34 notification for each successive period of thirty days.

35 5. The provision of physical therapy services of evaluation and screening
36 pursuant to this section shall be limited to a physical therapist, and any
37 authority for evaluation and screening granted within this section may not be
38 delegated. Upon each reinitiation of physical therapy services, a physical
39 therapist shall provide a full physical therapy evaluation prior to the reinitiation
40 of physical therapy treatment. Physical therapy treatment provided pursuant to
41 the provisions of subsection 4 of this section may be delegated by physical
42 therapists to physical therapist assistants only if the patient's current approved
43 health care provider has been so informed as part of the physical therapist's
44 seven-day notification upon reinitiation of physical therapy services as required
45 in subsection 4 of this section. Nothing in this subsection shall be construed as
46 to limit the ability of physical therapists or physical therapist assistants to
47 provide physical therapy services in accordance with the provisions of this
48 chapter, and upon the referral of an approved health care provider. Nothing in
49 this subsection shall prohibit an approved health care provider from acting within
50 the scope of their practice as defined by the applicable chapters of RSMo.

51 6. No person licensed to practice, or applicant for licensure, as a physical
52 therapist or physical therapist assistant shall make a medical diagnosis.

53 7. A physical therapist shall only delegate physical therapy treatment to
54 a physical therapist assistant or to a person in an entry level of a professional

55 education program approved by the Commission for Accreditation of Physical
56 Therapists and Physical Therapist Assistant Education (CAPTE) who satisfies
57 supervised clinical education requirements related to the person's physical
58 therapist or physical therapist assistant education. The entry-level person shall
59 be under on-site supervision of a physical therapist.

334.613. 1. The board may refuse to issue or renew a license to practice
2 as a physical therapist or physical therapist assistant for one or any combination
3 of causes stated in subsection 2 of this section. The board shall notify the
4 applicant in writing of the reasons for the refusal and shall advise the applicant
5 of the applicant's right to file a complaint with the administrative hearing
6 commission as provided by chapter 621, RSMo. As an alternative to a refusal to
7 issue or renew a license to practice as a physical therapist or physical therapist
8 assistant, the board may, at its discretion, issue a license which is subject to
9 probation, restriction, or limitation to an applicant for licensure for any one or
10 any combination of causes stated in subsection 2 of this section. The board's
11 order of probation, limitation, or restriction shall contain a statement of the
12 discipline imposed, the basis therefor, the date such action shall become effective,
13 and a statement that the applicant has thirty days to request in writing a hearing
14 before the administrative hearing commission. If the board issues a probationary,
15 limited, or restricted license to an applicant for licensure, either party may file
16 a written petition with the administrative hearing commission within thirty days
17 of the effective date of the probationary, limited, or restricted license seeking
18 review of the board's determination. If no written request for a hearing is
19 received by the administrative hearing commission within the thirty-day period,
20 the right to seek review of the board's decision shall be considered as waived.

21 2. The board may cause a complaint to be filed with the administrative
22 hearing commission as provided by chapter 621, RSMo, against any holder of a
23 license to practice as a physical therapist or physical therapist assistant who has
24 failed to renew or has surrendered his or her license for any one or any
25 combination of the following causes:

26 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
27 alcoholic beverage to an extent that such use impairs a person's ability to perform
28 the work of a physical therapist or physical therapist assistant;

29 (2) The person has been finally adjudicated and found guilty, or entered
30 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
31 any state or of the United States, for any offense reasonably related to the

32 qualifications, functions, or duties of a physical therapist or physical therapist
33 assistant, for any offense an essential element of which is fraud, dishonesty, or
34 an act of violence, or for any offense involving moral turpitude, whether or not
35 sentence is imposed;

36 (3) Use of fraud, deception, misrepresentation, or bribery in securing any
37 certificate of registration or authority, permit, or license issued under this
38 chapter or in obtaining permission to take any examination given or required
39 under this chapter;

40 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct,
41 or unprofessional conduct in the performance of the functions or duties of a
42 physical therapist or physical therapist assistant, including but not limited to the
43 following:

44 (a) Obtaining or attempting to obtain any fee, charge, tuition, or other
45 compensation by fraud, deception, or misrepresentation; willfully and continually
46 overcharging or overtreating patients; or charging for sessions of physical therapy
47 which did not occur unless the services were contracted for in advance, or for
48 services which were not rendered or documented in the patient's records;

49 (b) Attempting, directly or indirectly, by way of intimidation, coercion, or
50 deception, to obtain or retain a patient or discourage the use of a second opinion
51 or consultation;

52 (c) Willfully and continually performing inappropriate or unnecessary
53 treatment or services;

54 (d) Delegating professional responsibilities to a person who is not
55 qualified by training, skill, competency, age, experience, or licensure to perform
56 such responsibilities;

57 (e) Misrepresenting that any disease, ailment, or infirmity can be cured
58 by a method, procedure, treatment, medicine, or device;

59 (f) Performing services which have been declared by board rule to be of no
60 physical therapy value;

61 (g) Final disciplinary action by any professional association, professional
62 society, licensed hospital or medical staff of the hospital, or physical therapy
63 facility in this or any other state or territory, whether agreed to voluntarily or
64 not, and including but not limited to any removal, suspension, limitation, or
65 restriction of the person's professional employment, malpractice, or any other
66 violation of any provision of this chapter;

67 (h) Administering treatment without sufficient examination, or for other

68 than medically accepted therapeutic or experimental or investigative purposes
69 duly authorized by a state or federal agency, or not in the course of professional
70 physical therapy practice;

71 (i) Engaging in or soliciting sexual relationships, whether consensual or
72 nonconsensual, while a physical therapist or physical therapist assistant/patient
73 relationship exists; making sexual advances, requesting sexual favors, or
74 engaging in other verbal conduct or physical contact of a sexual nature with
75 patients or clients;

76 (j) Terminating the care of a patient without adequate notice or without
77 making other arrangements for the continued care of the patient;

78 (k) Failing to furnish details of a patient's physical therapy records to
79 treating physicians, other physical therapists, or hospitals upon proper request;
80 or failing to comply with any other law relating to physical therapy records;

81 (l) Failure of any applicant or licensee, other than the licensee subject to
82 the investigation, to cooperate with the board during any investigation;

83 (m) Failure to comply with any subpoena or subpoena duces tecum from
84 the board or an order of the board;

85 (n) Failure to timely pay license renewal fees specified in this chapter;

86 (o) Violating a probation agreement with this board or any other licensing
87 agency;

88 (p) Failing to inform the board of the physical therapist's or physical
89 therapist assistant's current telephone number, residence, and business address;

90 (q) Advertising by an applicant or licensee which is false or misleading,
91 or which violates any rule of the board, or which claims without substantiation
92 the positive cure of any disease, or professional superiority to or greater skill
93 than that possessed by any other physical therapist or physical therapist
94 assistant. An applicant or licensee shall also be in violation of this provision if
95 the applicant or licensee has a financial interest in any organization, corporation,
96 or association which issues or conducts such advertising;

97 (5) Any conduct or practice which is or might be harmful or dangerous to
98 the mental or physical health of a patient or the public; or incompetency, gross
99 negligence, or repeated negligence in the performance of the functions or duties
100 of a physical therapist or physical therapist assistant. For the purposes of this
101 subdivision, "repeated negligence" means the failure, on more than one occasion,
102 to use that degree of skill and learning ordinarily used under the same or similar
103 circumstances by the member of the applicant's or licensee's profession;

104 (6) Violation of, or attempting to violate, directly or indirectly, or assisting
105 or enabling any person to violate, any provision of this chapter, or of any lawful
106 rule adopted under this chapter;

107 (7) Impersonation of any person licensed as a physical therapist or
108 physical therapist assistant or allowing any person to use his or her license or
109 diploma from any school;

110 (8) Revocation, suspension, restriction, modification, limitation,
111 reprimand, warning, censure, probation, or other final disciplinary action against
112 a physical therapist or physical therapist assistant for a license or other right to
113 practice as a physical therapist or physical therapist assistant by another state,
114 territory, federal agency or country, whether or not voluntarily agreed to by the
115 licensee or applicant, including but not limited to the denial of licensure,
116 surrender of the license, allowing the license to expire or lapse, or discontinuing
117 or limiting the practice of physical therapy while subject to an investigation or
118 while actually under investigation by any licensing authority, medical facility,
119 branch of the armed forces of the United States of America, insurance company,
120 court, agency of the state or federal government, or employer;

121 (9) A person is finally adjudged incapacitated or disabled by a court of
122 competent jurisdiction;

123 (10) Assisting or enabling any person to practice or offer to practice who
124 is not licensed and currently eligible to practice under this chapter; or knowingly
125 performing any act which in any way aids, assists, procures, advises, or
126 encourages any person to practice physical therapy who is not licensed and
127 currently eligible to practice under this chapter;

128 (11) Issuance of a license to practice as a physical therapist or physical
129 therapist assistant based upon a material mistake of fact;

130 (12) Failure to display a valid license pursuant to practice as a physical
131 therapist or physical therapist assistant;

132 (13) Knowingly making, or causing to be made, or aiding, or abetting in
133 the making of, a false statement in any document executed in connection with the
134 practice of physical therapy;

135 (14) Soliciting patronage in person or by agents or representatives, or by
136 any other means or manner, under the person's own name or under the name of
137 another person or concern, actual or pretended, in such a manner as to confuse,
138 deceive, or mislead the public as to the need or necessity for or appropriateness
139 of physical therapy services for all patients, or the qualifications of an individual

140 person or persons to render, or perform physical therapy services;

141 (15) Using, or permitting the use of, the person's name under the
142 designation of "physical therapist", "physiotherapist", "registered physical
143 therapist", "P.T.", "Ph.T.", "P.T.T.", "D.P.T.", "M.P.T." or "R.P.T.", "physical
144 therapist assistant", "P.T.A.", "L.P.T.A.", "C.P.T.A.", or any similar designation
145 with reference to the commercial exploitation of any goods, wares or merchandise;

146 (16) Knowingly making or causing to be made a false statement or
147 misrepresentation of a material fact, with intent to defraud, for payment under
148 chapter 208, RSMo, or chapter 630, RSMo, or for payment from Title XVIII or
149 Title XIX of the federal Medicare program;

150 (17) Failure or refusal to properly guard against contagious, infectious,
151 or communicable diseases or the spread thereof; maintaining an unsanitary
152 facility or performing professional services under unsanitary conditions; or failure
153 to report the existence of an unsanitary condition in any physical therapy facility
154 to the board, in writing, within thirty days after the discovery thereof;

155 (18) Any candidate for licensure or person licensed to practice as a
156 physical therapist or physical therapist assistant paying or offering to pay a
157 referral fee or, notwithstanding section 334.010 to the contrary, practicing or
158 offering to practice professional physical therapy independent of the prescription
159 and direction of a person licensed and registered as a physician and surgeon
160 under this chapter, as a physician assistant under this chapter, as a chiropractor
161 under chapter 331, RSMo, as a dentist under chapter 332, RSMo, as a podiatrist
162 under chapter 330, RSMo, **as an advanced practice registered nurse under**
163 **chapter 335**, or any licensed and registered physician, chiropractor, dentist, or
164 podiatrist practicing in another jurisdiction, whose license is in good standing;

165 (19) Any candidate for licensure or person licensed to practice as a
166 physical therapist or physical therapist assistant treating or attempting to treat
167 ailments or other health conditions of human beings other than by professional
168 physical therapy and as authorized by sections 334.500 to 334.685;

169 (20) A pattern of personal use or consumption of any controlled substance
170 unless it is prescribed, dispensed, or administered by a physician who is
171 authorized by law to do so;

172 (21) Failing to maintain adequate patient records under 334.602;

173 (22) Attempting to engage in conduct that subverts or undermines the
174 integrity of the licensing examination or the licensing examination process,
175 including but not limited to utilizing in any manner recalled or memorized

176 licensing examination questions from or with any person or entity, failing to
177 comply with all test center security procedures, communicating or attempting to
178 communicate with any other examinees during the test, or copying or sharing
179 licensing examination questions or portions of questions;

180 (23) Any candidate for licensure or person licensed to practice as a
181 physical therapist or physical therapist assistant who requests, receives,
182 participates or engages directly or indirectly in the division, transferring,
183 assigning, rebating or refunding of fees received for professional services or
184 profits by means of a credit or other valuable consideration such as wages, an
185 unearned commission, discount or gratuity with any person who referred a
186 patient, or with any relative or business associate of the referring person;

187 (24) Being unable to practice as a physical therapist or physical therapist
188 assistant with reasonable skill and safety to patients by reasons of incompetency,
189 or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals,
190 or as a result of any mental or physical condition. The following shall apply to
191 this subdivision:

192 (a) In enforcing this subdivision the board shall, after a hearing by the
193 board, upon a finding of probable cause, require a physical therapist or physical
194 therapist assistant to submit to a reexamination for the purpose of establishing
195 his or her competency to practice as a physical therapist or physical therapist
196 assistant conducted in accordance with rules adopted for this purpose by the
197 board, including rules to allow the examination of the pattern and practice of
198 such physical therapist's or physical therapist assistant's professional conduct,
199 or to submit to a mental or physical examination or combination thereof by a
200 facility or professional approved by the board;

201 (b) For the purpose of this subdivision, every physical therapist and
202 physical therapist assistant licensed under this chapter is deemed to have
203 consented to submit to a mental or physical examination when directed in writing
204 by the board;

205 (c) In addition to ordering a physical or mental examination to determine
206 competency, the board may, notwithstanding any other law limiting access to
207 medical or other health data, obtain medical data and health records relating to
208 a physical therapist, physical therapist assistant or applicant without the
209 physical therapist's, physical therapist assistant's or applicant's consent;

210 (d) Written notice of the reexamination or the physical or mental
211 examination shall be sent to the physical therapist or physical therapist

212 assistant, by registered mail, addressed to the physical therapist or physical
213 therapist assistant at the physical therapist's or physical therapist assistant's
214 last known address. Failure of a physical therapist or physical therapist
215 assistant to submit to the examination when directed shall constitute an
216 admission of the allegations against the physical therapist or physical therapist
217 assistant, in which case the board may enter a final order without the
218 presentation of evidence, unless the failure was due to circumstances beyond the
219 physical therapist's or physical therapist assistant's control. A physical therapist
220 or physical therapist assistant whose right to practice has been affected under
221 this subdivision shall, at reasonable intervals, be afforded an opportunity to
222 demonstrate that the physical therapist or physical therapist assistant can
223 resume the competent practice as a physical therapist or physical therapist
224 assistant with reasonable skill and safety to patients;

225 (e) In any proceeding under this subdivision neither the record of
226 proceedings nor the orders entered by the board shall be used against a physical
227 therapist or physical therapist assistant in any other proceeding. Proceedings
228 under this subdivision shall be conducted by the board without the filing of a
229 complaint with the administrative hearing commission;

230 (f) When the board finds any person unqualified because of any of the
231 grounds set forth in this subdivision, it may enter an order imposing one or more
232 of the disciplinary measures set forth in subsection 3 of this section.

233 3. After the filing of such complaint before the administrative hearing
234 commission, the proceedings shall be conducted in accordance with the provisions
235 of chapter 621, RSMo. Upon a finding by the administrative hearing commission
236 that the grounds provided in subsection 2 of this section for disciplinary action
237 are met, the board may, singly or in combination:

238 (1) Warn, censure or place the physical therapist or physical therapist
239 assistant named in the complaint on probation on such terms and conditions as
240 the board deems appropriate for a period not to exceed ten years;

241 (2) Suspend the physical therapist's or physical therapist assistant's
242 license for a period not to exceed three years;

243 (3) Restrict or limit the physical therapist's or physical therapist
244 assistant's license for an indefinite period of time;

245 (4) Revoke the physical therapist's or physical therapist assistant's
246 license;

247 (5) Administer a public or private reprimand;

248 (6) Deny the physical therapist's or physical therapist assistant's
249 application for a license;

250 (7) Permanently withhold issuance of a license;

251 (8) Require the physical therapist or physical therapist assistant to
252 submit to the care, counseling or treatment of physicians designated by the board
253 at the expense of the physical therapist or physical therapist assistant to be
254 examined;

255 (9) Require the physical therapist or physical therapist assistant to attend
256 such continuing educational courses and pass such examinations as the board
257 may direct.

258 4. In any order of revocation, the board may provide that the physical
259 therapist or physical therapist assistant shall not apply for reinstatement of the
260 physical therapist's or physical therapist assistant's license for a period of time
261 ranging from two to seven years following the date of the order of revocation. All
262 stay orders shall toll this time period.

263 5. Before restoring to good standing a license issued under this chapter
264 which has been in a revoked, suspended, or inactive state for any cause for more
265 than two years, the board may require the applicant to attend such continuing
266 medical education courses and pass such examinations as the board may direct.

267 6. In any investigation, hearing or other proceeding to determine a
268 physical therapist's, physical therapist assistant's or applicant's fitness to
269 practice, any record relating to any patient of the physical therapist, physical
270 therapist assistant, or applicant shall be discoverable by the board and
271 admissible into evidence, regardless of any statutory or common law privilege
272 which such physical therapist, physical therapist assistant, applicant, record
273 custodian, or patient might otherwise invoke. In addition, no such physical
274 therapist, physical therapist assistant, applicant, or record custodian may
275 withhold records or testimony bearing upon a physical therapist's, physical
276 therapist assistant's, or applicant's fitness to practice on the [ground] **grounds**
277 of privilege between such physical therapist, physical therapist assistant,
278 applicant, or record custodian and a patient.

✓